

Counsel for the defendants invited me to draw the inference that the plaintiff's books of account were not properly kept under the Ordinance and if that were so, he must be doing it for a purpose. I have examined the plaintiff's account books and it is true that a number of loans have not been paid off. It is also true that on the occasions when they were paid off they were in some instances settled by a substantial lump sum payment.

On these facts alone I am not prepared to infer that the plaintiff's books of account were not properly kept nor am I prepared to say that there has not been a proper allocation to principal and interest.

I find that copies of the notes were handed to the defendants before the money was lent. It was urged upon me by Mr. Cashin that in all these moneylending cases never yet has a defendant been able to produce a copy of the promissory note which he has signed and that I should infer in this case that they were not given to the defendants. On the other hand, for a defendant to produce a copy of the note would be to destroy one of the stock defences which is always raised in these cases and I would have been very surprised indeed if the defendants in this case had done so.

In the result therefore the defence fails on all points and the plaintiff is entitled to judgment.

Before fixing the amount I am, as I intimated during the argument, prepared to hear counsel on the question of interest.

After argument, interest is agreed at 20 per centum per annum from the date of the loans until judgment.

Judgment for the plaintiff for \$6,895.96 and costs. The counterclaim is dismissed. Stay of execution both as to judgment debt and costs provided:—

(a) that the defendants file a notice of appeal within 21 days from the date hereof and if they do so, stay to remain in force until determination of the appeal;

(b) that the defendants pay into Court within 21 days from the date hereof the sum of \$1,500, being as to \$500 the usual security for costs of the appeal and as to \$1,000 additional security;

(c) the 1st defendant's passport to be deposited with the Registrar forthwith.

Liberty to apply.

Order accordingly.

Solicitors: K. K. Bezboruah; Rodyk & Davidson.

CHIN SHAK LEN v. LIN FAH

[O. C. J. (Gill J.) October 9, 1962]

[K.L. — Originating Summons No. 1689 of 1962]

Husband and Wife — Matrimonial home registered in name of husband — Wife providing part of money — Resulting trust — Married Women's Ordinance, 1957, s.11 — Land Code (Cap. 138), s.240.

Married Women — Deserted wife — No interest, legal or equitable or equity in matrimonial home — Land Code (Cap. 138), s.42.

In 1951, the respondent, the husband of the applicant, bought a 1/3rd share in a piece of land in Kajang, for \$1,600, the greater part of which, \$1,200, was provided by the wife, and became the registered proprietor together with two other purchasers.

In 1955 the husband deserted the wife who continued staying on the said land. From 1951 to 1959 the respondent sold the greater part of his share to various purchasers.

In an application by the wife under section 11 of the Married Women's Ordinance, 1957 for the determination of certain questions concerning the title to or possession of property,

Held: the wife is entitled to the share registered in the husband's name on a resulting trust, there being no presumption of advancement where a wife provides money for the purchase of property in the husband's name.

Semble, a deserted wife has no interest, legal or equitable, or equity in the matrimonial home, following *Dickson v. McWhinnie* (6).

Cases referred to:—

- (1) *Cook v. Cook* [1962] P. 181.
- (2) *Bull v. Bull* [1955] Q.B. 234.
- (3) *Allcard v. Skinner* (1887), 36 Ch. D. 145.
- (4) *Shakespear v. Atkinson* [1955] N.Z.L.R. 1011.
- (5) *Cockrane v. Kneebone* [1957] N.Z.L.R. 456.
- (6) *Dickson v. McWhinnie* [1958] S.R. (N.S.W.) 179.
- (7) *Thompson v. Earthy* [1951] 2 K.B. 596; noted 25 A.L.J. 694.
- (8) *Hine v. Hine* [1962] 3 All E.R. 346.

ORIGINATING SUMMONS.

Chan Sek Keong for the applicant.

Kam Woon Wah for the respondent.

Cur. Adv. Vult.

Gill J.: These proceedings have been commenced by way of summons under section 11 of the Married Women's Ordinance, 1957 for the determination in a summary way of a question between a wife (the applicant) and her husband (the respondent) as to the title to or possession of an undivided interest in the land held under Certificate of Title No. 10075 for Lot 71, section 11 in the Town of Kajang, together with a building thereon known as No. 164, Reko Road, Kajang.

It is common ground that the wife provided a sum of \$1,200 and the husband put in \$400 of his own money for the purchase of this undivided interest in the said land in March 1951 and that the husband obtained registration of title in his own name. The only controversy between the parties is that whereas the wife says that she

provided the money for the purchase of the land in her own name, the husband says that the money given to him by his wife for the purchase of this land was a loan which he has since repaid.

The applicant's story is that soon after her marriage to the respondent in 1929 she started working as a rubber tapper on an estate near Kajang and she lived with her family in a house on the estate until the year 1951 when, because of the Emergency, the Government would not allow her and her family to stay on the estate so that she had to buy a piece of land for the purpose of erecting a dwelling house thereon. Her husband, the respondent, asked her to buy a piece of land and she provided \$1,200 for its purchase. He told her that he would have the land registered in her name and those of her children. She came to know that her husband had got the land registered in his own name not long ago when he proposed to sell it. She then told him that as she had provided the money for the purchase of the land and erected a house on it, she would like to continue to live on the land. She asked him to transfer the land to her, but he said he would not and asked her to allow him to sell the land.

In answer to a question in cross-examination as to what she had stated in paragraph 4 of her affidavit in support of the summons she said:

"It is true that Chen Siong told me in 1951 that the land was registered in the names of three of them including my husband. But as my husband himself did not tell me so, I did not take Chen Siong's version. I asked my husband about it. He told me that what Chen Siong told me was not true. I believed that the piece of land was registered in my name."

She went on to say that when her husband bought the land he said he would register it in her name and denied stating in her affidavit that her husband told her that he had registered the land in his name. Her explanation as to this was that the affidavit was not explained to her. She further stated that the title to the land was handed to her in 1951 and it remained in her possession for two years, during which period she paid quit rent, but she did not ask anybody whether her name was on the title because she was not suspicious in spite of what Chen Siong had told her. In my opinion the apparent inconsistencies in her evidence as to the point of time at which it came to her knowledge that the land was registered in her husband's name do not materially affect her case, which is that she provided the major portion of the purchase money, and this is not denied by her husband.

The applicant's evidence was supported by three of her children. Her daughter, Lin Kim Ying (PW.2) stated that she was 15 years old in 1951 when she lived with her mother in the labour lines in Kajang Estate. Her father was then staying in Sungei Kuantan with his second wife, but he came home off and on. She said that the land on which her mother's present house stands was bought by her mother because they were asked to move from the estate. It

A was her father who suggested to her mother to buy the land. At first her mother said that she did not want to buy the land because the Government had given them a piece of land at Sungei Chuah to build a house on. Her father, however, said that as this land was near the town, it would be easier for the children to go to school. So her mother gave her father money to buy the land. B The witness stated that she was present when all this took place. Under cross-examination she said that she did not know in 1951 that her father's name was on the title. Her mother told her in 1951 that her name was not in the title because somebody had told her so, but she did not believe it until she saw the title in July this year. C

The applicant's son, Lin Yoon Choy (PW.3), gave similar evidence. He too said that he was living with his parents on Kajang Estate in 1951, that in July that year they moved to Kajang Town and that the land on which they then lived was bought with money produced by his mother. D He was present when his father proposed to his mother to buy the land. He stated under cross-examination that the money produced by his mother to his father was not a loan to his father. He added that it was only recently when his father wanted to sell the piece of land that he came to know that the land was not registered in his mother's name. E

Lastly, there was the evidence of the applicant's eldest daughter named Lin Choy Liang (PW.4) who said that in January 1951 she lived with her mother on an estate near Kajang and that a few months later her mother moved house to the place where she now lives. She stated further that the land was bought with her mother's money and that her mother did not give the money to her father as a loan. F

As stated above, the respondent's contention is that he had \$1,200 from the applicant as a loan for the purchase of an undivided interest in the land, there being two other purchasers. G This loan was repaid when he contributed \$2,400 for the purchase of 9½ acres of land in October, 1951, in his wife's name. He advanced \$2,400 to his wife because she needed extra money to buy the land. As against the respondent's evidence, the applicant was emphatic that the sum of \$1,200 she gave her husband in 1951 was not a loan. What she said was this: H

"It was money given to him to buy a piece of land for me to build a house on. When my husband put up the money to buy the 9½ acres of land for me, he did not say he was repaying the \$1,200 I had given him. What he said was that there was a good piece of rubber land for sale. I said I did not have the money. He asked me to produce all the money I had and I gave him \$2,200. I knew that he would have to put up some money, as there was a shortage, but he said that he was buying the land for me. He did not mention about the repayment of \$1,200 to me." I

Considering the whole of the evidence in this case, it would seem clear that, when the applicant was asked to leave the estate on which she had lived for a long period, the respondent, as her husband, set about to find ways and means

to provide a home for her, his principal wife, and their nine children. It was he who suggested that she should buy a piece of land near Kajang. He asked her to put up whatever money she had and she produced \$1,200. He contributed \$400 of his own money and obtained a transfer in his own name of an undivided share in the land. He was also concerned about making further provision for the family by buying a small piece of rubber land for them. Whatever money he advanced for the purchase of this rubber land in the name of his wife must be presumed to be an advancement, because it is well settled law that if a husband buys property and has it conveyed to his wife, *prima facie* this is a gift to her. No such presumption of advancement arises where a wife provides money for the purchase of property in her husband's name. I am of the considered opinion that the husband's story about his wife having given him a loan of \$1,200 and his paying off this loan by advancing a sum of \$2,400 for the purchase of property in her name is an afterthought. It must be borne in mind that in 1951 the relations between the parties were not strained, because it was not until 1955 that he finally left the applicant. The truth would appear to be that the respondent as a dutiful husband and father was truly concerned about providing a home for the family and making further financial provisions for their future. I therefore find as a fact that the sum of \$1,200 paid by the applicant for the purchase of the land in question was not a loan.

It is, of course, well settled law that where two persons advance purchase money jointly and the purchase is taken in the name of one only, there is a resulting trust in favour of the other as to so much of the money as the other advanced. In the recent English case of *Cook v. Cook* ⁽¹⁾ the facts were similar to the facts in this case. In that case, too, whilst a husband and wife were living together, a house was purchased for use as the matrimonial home. Both parties contributed towards the purchase price, but the property was conveyed into the name of the husband only. It was held that since both parties had contributed to the purchase price and the conveyance had been in the name of the husband only, they were equitable tenants in common, the husband holding the property subject to a resulting trust in favour of the wife. Phillimore J. in the course of his judgment referred to the case of *Bull v. Bull* ⁽²⁾ in which Denning L.J. said:—

"Similar circumstances must often arise in families . . . each is entitled in equity to an undivided share in the house, the share of each being in proportion to his or her respective contribution."

Having found on the evidence in this case that the husband contributed \$400 out of a total of \$1,600 for the purchase of this land, I must hold that he became entitled only to a fourth of the one-third undivided share in the land registered in his name in 1951. There is evidence to show that in 1955 he sold one-fifth of his undivided one-third share and later one-twelfth of

A his undivided four-fifteenth share. In 1959 he sold three-fourths of his undivided 11/45th share, his present registered undivided interest in the land being 11/180th share. Thus he has disposed of considerably more than the share that was due to him by virtue of his contribution of \$400 towards the purchase price. The undivided interest in the land of which he is now the registered proprietor therefore belongs to his wife by reason of a resulting trust arising in her favour.

B It has been argued on behalf of the respondent that the applicant has been guilty of delay in bringing these proceedings and that such delay defeats her equity. The case cited in support of that argument is the case of *Allcard v. Skinner* ⁽³⁾. I do not think the wife has been guilty of any delay when it is borne in mind that she has been in possession of the land ever since it was purchased and that she had no reason to feel apprehensive about being put out of possession until her husband told her recently that he was intending to sell the land.

C Before concluding the matter, I feel I must also deal with the second leg of the applicant's case which is that, even assuming that the sum of \$1,200 which she paid to her husband was a loan, as a deserted wife she has an equitable interest in the matrimonial home which has been built on the land. The learned counsel cited the New Zealand cases of *Shakespeare v. Atkinson* ⁽⁴⁾ and *Cockrane v. Kneebone* ⁽⁵⁾ in support of this proposition, although he frankly admitted that this doctrine is not recognised in Australia as would appear from the case of *Dickson v. McWhinnie* ⁽⁶⁾. A summary of *Dickson's* case appears at page 105 of the *Australian Law Journal*, Vol. 32 (1958–1959). At page 107 there is the following passage from the judgment of the full court of the Supreme Court:—

D " . . . Notwithstanding the many expressions of opinion by Lord Denning, we think, with all respect, that a deserted wife has no interest, legal or equitable, in the matrimonial home, and no equity, as we understand the word, enforceable against a purchaser of the land whether with or without notice of her occupancy and that she is a deserted wife. The utmost that can be said, in our opinion, is that where proceedings by that purchaser to recover possession are taken against the wife in a court which has a discretion to postpone execution of its order, the facts that the premises sought to be recovered were the matrimonial home and that the wife is a deserted wife are circumstances to be considered in the exercise of whatever discretion there is to postpone the date for giving up possession. We are of opinion that *Thompson v. Earthy* ⁽⁷⁾ was rightly decided and we agree with what Roxburgh J. said in that case. These remarks, it may be noted, apply whether or not the land in question is under the provisions of the Real Property Act, 1900–1956 (N.S.W.): if it is, sections 40(1), 42 and 43 of that Act provide an added ground for holding that the deserted wife 'cannot, merely as such, set up a claim to an unregistrable proprietary interest so as to defeat the right of the registered proprietor to dispose of the land for which he holds a clean certificate of title'."

E In my opinion the above passage, in view of the provisions of section 42 of the Land Code (Cap. 138), sets out the correct position as to the state of the law in Selangor on this point. Needless

to say, the applicant's claim would fail if it were to be decided on this point alone.

I now come to the order which, in view of what I have stated above, should be made in this case. In this connection in the English case of *Hine v. Hine* (8) which arose out of an application under section 17 of the English Married Women's Property Act, 1882, on which the provisions of section 11 of our Married Women Ordinance, 1957 are based, Lord Denning M.R. said at page 347:

"It seems to me that the jurisdiction of the court over family assets under section 17 is entirely discretionary. Its discretion transcends all rights, legal or equitable, and enables the court to make such order as it thinks fit. This means, as I understand it, that the court is entitled to make such order as appears to be fair and just in all the circumstances of the case."

Two principles have, however, emerged in exercising this discretion. The first is that, when it can clearly be seen that the parties intended that one piece of property or one amount of money should belong to one or the other in any event, that intention should prevail. The second principle only arises where no such intention appears."

Applying these principles, it seems to me that the proper order in this case would be: (a) a declaration that the respondent holds the 11/180th share in the land held under Certificate of Title No. 10075 for Lot 71, section 11 in the Town of Kajang together with a building thereon known as No. 164, Reko Road, Kajang, in trust for the applicant, (b) that the said land vest in the applicant, and (c) that the proper registering authority do make such memorial as may be necessary to give effect to the above orders of the court. There will therefore be an order accordingly and an order that the respondent do pay the applicant the costs of this application which are hereby assessed at \$350.

Order accordingly.

Solicitors: *Bannon & Bailey; Kam Woon Wah.*

PUBLIC PROSECUTOR v. NG NEE TIAK

[A. Cr. J. (Hashim J.) October 10, 1962]

[K.B. — Criminal Appeal No. 17 of 1962]

Criminal Law and Procedure — Acquittal and discharge — Reason for, to be recorded — Joinder of charges — Criminal Procedure Code (Cap. 6), s.164.

Prevention of Corruption — Charges under s.4(b), Prevention of Corruption Act, 1961, alternatively under ss.116 and 165, Penal Code — When presumption under s.14 of the Act arises.

The accused was charged in the Sessions Court on two counts, both under section 4(b) of the Prevention of Corruption Act, 1961, alternatively sections 116 and 165 of the Penal Code. At the close of the case for the prosecution the learned President acquitted and discharged the accused. His record reads "Doubtful. Accused acquitted and discharged in both cases".

Held: (1) merely to record the word "doubtful" is not sufficient. It is ambiguous and does not convey any sense;

(2) once the prosecution has proved that any gratification has been paid the presumption under section 14 of the Act arises.

In this case the prosecution had adduced sufficient evidence for the defence to be called.

A CRIMINAL APPEAL.

Tengku Ahmad Rithauddeen (Deputy Public Prosecutor) for the appellant.

A. Jayadeva for the respondent.

Hashim J.: The accused was charged in the Sessions Court, Kota Bharu on two counts, both under section 4(b) of the Prevention of Corruption Act, 1961, alternatively sections 116 and 165 of the Penal Code. At the close of the case for the prosecution the learned President acquitted and discharged the accused. His record reads "Doubtful. Accused acquitted and discharged in both cases". In my opinion, merely to record the word "Doubtful" is not sufficient. It is ambiguous and does not convey any sense. Was he doubtful that the prosecution had not made out a *prima facie* case against the accused in respect of the principal charges or the alternative charges? I would suggest that when a President or a Magistrate acquits and discharges an accused person at the close of the case for the prosecution he should record briefly the reasons for such acquittal. This would assist the prosecution when it comes to consider whether to appeal against the order or not.

This appeal would appear to be in respect of two cases both against the same accused, Nos. 20 and 19 of 1962. Case No. 20 of 1962 is in respect of an offence alleged to have been committed on February 9, 1962 and Case No. 19 of 1962 for an offence alleged to have been committed on March 4, 1962. The accused was first charged in the Sessions Court on April 17, 1962 in respect of both cases. I think the numbering of the cases is illogical. It should have been the other way about. The alleged offence of February 9, 1962 should have been given the No. 19 of 1962 and the alleged offence of March 4, 1962, No. 20 of 1962. In any case, I think the prosecution was wrong to separate the two cases. Accused could have been charged on two counts in the same case as both offences were alleged to have been committed within a year — section 164, Criminal Procedure Code.

The principal witness in both these cases was Senior Inspector Abdul Manaf. He stated that accused handed to him on two occasions, cash \$40 and \$35 respectively. On both occasions the accused said the money was "tea money". The Inspector came to Police Headquarters in Kota Bharu and reported the matter to Inspector Ali Mokhtar on both occasions. The numbers of the currency notes were recorded. The money was produced and admitted in evidence. The learned President in his six page judgment, if I understand him correctly, came to the conclusion that the failure to arrest the accused "on the spot" gave rise to the inference that the Inspector's evidence was "doubtful". Incidentally I would with respect suggest that Presidents and Magistrates should write their judgments succinctly and coherently. This would assist everybody including themselves. A long and rambling judgment would only confuse the person who reads